

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
3 BEFORE THE HONORABLE ROBERT C. JONES, SENIOR DISTRICT JUDGE
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4 Applications In Internet :
5 Time, LLC, : No. 3:13-cv-0628-RCJ-CBC
6 :
7 Plaintiff, : September 17, 2018
8 :
9 -vs- :
10 : United States District Court
11 Salesforce.com, Inc., : 400 S. Virginia Street
12 : Reno, Nevada 89501
13 Defendant. :
14 _____ :

11 **TRANSCRIPT OF STATUS CONFERENCE**

13 A P P E A R A N C E S:

14 FOR THE PLAINTIFF: Philip Graves
15 Steven Sereboff
16 Attorneys at Law

17 FOR THE DEFENDANT: Sam Stake
18 Leigh Goddard
19 Attorney at Law

20 Proceedings recorded by mechanical stenography produced by
21 computer-aided transcript

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23 NEVADA LICENSE NO. 392
24 CALIFORNIA LICENSE NO. 8536
25

1 Reno, Nevada, Monday, September 17, 2018, 10:15 a.m.

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10:13:04 3
10:13:16 4 THE COURT: The next case is Salesforce
10:13:18 5 3:13-civil-628, Application In Internet Time, LLC v.
10:13:26 6 Salesforce.com, please.

10:13:45 7 THE COURT: Thank you. Good morning.

10:13:47 8 MR. GRAVES: Good morning, Philip Graves,
10:13:49 9 Hagens, Berman, Sobol, Shapiro, on behalf of plaintiff,
10:13:50 10 Applications In Internet Time.

10:13:52 11 The Court may note, uh, my Pro Hac Vice application
10:13:58 12 is pending. It was filed on Friday.

10:13:59 13 THE COURT: I'll certainly grant that.

10:14:01 14 MR. SEREBOFF: Good morning, Your Honor.
10:14:02 15 Steven Sereboff for Applications in Internet Time. Also, my
10:14:07 16 PHV is pending.

10:14:08 17 THE COURT: Very good.

10:14:10 18 MR. SEREBOFF: Good morning.

10:14:11 19 MR. BURKE: Good morning, Your Honor.
10:14:12 20 Michael Burke, Robison, Sharp, Sullivan and Brust on
10:14:14 21 behalf of Application In Internet Time.

10:14:16 22 THE COURT: Very good. Thank you.

10:14:17 23 MR. STAKE: Sam Stake from Quinn, Emanuel,
10:14:21 24 Urquhart and Sullivan on behalf of Salesforce.

10:14:23 25 THE COURT: Okay.

10:14:24 1 MR. GODDARD: Leigh Goddard, also on behalf of
10:14:28 2 Salesforce.

10:14:28 3 THE COURT: No one on the phone, right?

10:14:30 4 (No response.)

10:14:30 5 THE COURT: All right. This is pending in PT
10:14:34 6 proceedings. I need your status update where that stands and
10:14:39 7 if we should further delay this case or proceed.

10:14:49 8 MR. SEREBOFF: Sure. I'm Steve Sereboff.

10:14:52 9 THE COURT: Thank you, sir. Please.

10:14:53 10 MR. SEREBOFF: Your Honor, this case has been
10:14:55 11 stayed for nearly two-and-a-half years. In fact, if you
10:14:59 12 include the first stay from Salesforce's petition for CBM,
10:15:05 13 the total time in this case it has been stayed is about three
10:15:08 14 years. AIT would very much like to have this case moved
10:15:17 15 forward. In the ensuing time, the decisions of the patent
10:15:22 16 office, the PTAB were appealed to the Court of Appeals for the
10:15:26 17 Federal Circuit.

10:15:27 18 Your Honor, have you had a chance to review the
10:15:29 19 Federal Circuit's opinion?

10:15:30 20 THE COURT: No, I haven't.

10:15:32 21 MR. SEREBOFF: Okay.

10:15:32 22 THE COURT: Tell me, first, what did the PT do
10:15:35 23 initially?

10:15:35 24 MR. SEREBOFF: So, Your Honor, there were two
10:15:38 25 initial -- two issues that were hotly contested in the IPRs at

10:15:43 1 the PTAB. There was --

10:15:44 2 THE COURT: There was only by Salesforce.com.

10:15:48 3 MR. SEREBOFF: No, no. Okay.

10:15:49 4 THE COURT: Were there other joining parties?

10:15:51 5 MR. SEREBOFF: So, actually, Salesforce was
10:15:54 6 not directly a party in those IPRs. If you recall, when you
10:15:58 7 granted the stay, uh, let's call it two-and-a-half years ago,
10:16:03 8 uh, part of the reason that you granted the stay was that
10:16:07 9 Salesforce, itself, was not a party to those IPRs and the
10:16:12 10 rationale was that under the American Events Act, there is a
10:16:16 11 one year statute of limitations for petitioning for IPR, and
10:16:20 12 Salesforce time for petition had already been -- so they were
10:16:25 13 time-barred.

10:16:25 14 THE COURT: Okay. So what did PT do?

10:16:27 15 MR. SEREBOFF: Well, we argued to the PTAB that
10:16:32 16 petitioner was acting as proxy for Salesforce and, therefore,
10:16:35 17 because they were being -- they were actually acting as a
10:16:39 18 proxy, they were time-barred as well as Salesforce. The PTAB
10:16:43 19 would hear none of that. We were given very limited discovery
10:16:47 20 and, ultimately, PTAB held that Salesforce, that RPX was not
10:16:54 21 acting as proxy for Salesforce.

10:16:56 22 Along similar lines, we also hotly contested the
10:17:01 23 validity issues. And, ultimately, the PTAB held that both
10:17:05 24 patents are invalid. Subsequently, we appealed to the Federal
10:17:09 25 Circuit, arguing both the proxy issue and validity issue. The

10:17:14 1 Federal Circuit did not reach a validity issue in a 50-page
10:17:19 2 opinion. Uh, the primary opinion signed by Judge O'Malley was
10:17:24 3 about 30 pages, addressing, solely, the proxy issues.

10:17:31 4 THE COURT: But you raise the validity issue in
10:17:33 5 your appeal?

10:17:33 6 MR. SEREBOFF: We did. We did.

10:17:35 7 THE COURT: Huh-uh.

10:17:35 8 MR. SEREBOFF: So, ultimately, I will tell you
10:17:36 9 that the Federal Circuit vacated and remanded back to the
10:17:41 10 PTAB. The remand has not issued mandate yet.

10:17:48 11 THE COURT: For what purpose and on what basis?

10:17:50 12 MR. SEREBOFF: The remand to the PTAB?

10:17:52 13 Well, the Federal Circuit held that, that, uh, the
10:17:59 14 PTAB did not give us sufficient discovery. The PTAB had
10:18:02 15 failed to properly consider all of the evidence. The PTAB
10:18:06 16 applied the wrong legal standards. And, the PTAB had
10:18:10 17 improperly shifted the burden of proof to AIT.

10:18:12 18 THE COURT: It affirmed the statutory time limit
10:18:16 19 however.

10:18:19 20 MR. SEREBOFF: Well, the statutory time
10:18:21 21 limit is, clearly, there. But, the Federal Circuit did not
10:18:24 22 address the ultimate question of whether RPX was acting as
10:18:29 23 Salesforce's proxy. And it seemed that the -- this was the
10:18:31 24 issue --

10:18:31 25 THE COURT: Okay. Did it reverse that ruling?

10:18:34 1 MR. SEREBOFF: I'm sorry?

10:18:35 2 THE COURT: Did it reverse that ruling?

10:18:36 3 MR. SEREBOFF: No. They vacated.

10:18:38 4 THE COURT: They didn't even address it?

10:18:39 5 MR. SEREBOFF: Right. They vacated -- and I
10:18:41 6 think, Your Honor, it's because this truly was an issue of
10:18:46 7 first impression for the Federal Circuit. And it seemed to us
10:18:49 8 that they wanted to give the PTAB a chance to --

10:18:51 9 THE COURT: So it is sent set back, now, for
10:18:53 10 further discovery?

10:18:54 11 MR. SEREBOFF: Correct -- sort of.

10:18:56 12 THE COURT: Okay.

10:18:57 13 MR. SEREBOFF: So -- I'm sorry, Your Honor. So
10:18:59 14 after the Federal Circuit issued their opinion, RPX has,
10:19:05 15 subsequently, petitioned for rehearing en banc; and, so the
10:19:09 16 en banc petition is now before the Federal Circuit.

10:19:12 17 THE COURT: Okay. Thank you.

10:19:15 18 MR. STAKE: Your Honor, Sam Stake for
10:19:19 19 Salesforce.

10:19:22 20 Salesforce's position here is that the stay should
10:19:24 21 remain in place in the interest of judicial efficiency, and
10:19:29 22 under Your Honor's analysis for which Your Honor put in place
10:19:33 23 the stay in the first place. The basic analysis, which Your
10:19:37 24 Honor is familiar with, is whether, in the course of the stay,
10:19:40 25 there will be simplification of issues in this action. And as

10:19:48 1 opposing counsel stated, all the -- the PTAB found all
10:19:54 2 asserted claims against Salesforce invalid. Now --

10:19:59 3 THE COURT: Did the appellate court address
10:20:01 4 invalidity at all?

10:20:03 5 MR. STAKE: No. It --

10:20:04 6 THE COURT: They vacated on other grounds.

10:20:06 7 MR. STAKE: That's right. The appellate court
10:20:08 8 stated that they would not visit -- they, they would not visit
10:20:11 9 the issue of invalidity in that opinion. Instead --

10:20:13 10 THE COURT: Did they also say they wouldn't
10:20:15 11 visit the issue of, you know, Salesforce standing as a proxy?

10:20:24 12 MR. STAKE: So, the -- they remanded to the
10:20:27 13 PTAB to conduct further proceedings on whether Salesforce
10:20:33 14 was a real party in interest or a proxy in these PTAB
10:20:37 15 proceeding. Of course --

10:20:38 16 THE COURT: And the further discovery pertains
10:20:41 17 to that issue as well?

10:20:42 18 MR. STAKE: That's right.

10:20:42 19 THE COURT: I see.

10:20:43 20 MR. STAKE: There was some discovery. The
10:20:45 21 discovery that's alluded to in the opinion which I read again
10:20:49 22 last night, was, potentially, a further deposition of RPX
10:20:54 23 executive, I believe. And Salesforce -- without being privy,
10:21:00 24 without having a part of those proceedings, my own, and
10:21:03 25 our own read is that these will limited proceedings just

10:21:06 1 addressing this one issue of the real party in interest. We
10:21:08 2 expect that the Court -- that the PTAB will not re-examine
10:21:13 3 invalidity. And so if the PTAB --

10:21:15 4 THE COURT: Did the appellate court order more
10:21:18 5 discovery on the question of invalidity?

10:21:21 6 MR. STAKE: No.

10:21:21 7 THE COURT: It's just the question of proxy?

10:21:24 8 MR. STAKE: That's right; just the question of
10:21:26 9 proxy. And so, logically, we expect that the PTAB, if it
10:21:32 10 agrees with RPX on the real party in interest issue, that it
10:21:38 11 will, again, issue a final written decision finding all
10:21:42 12 claims invalid, including all claims that are asserted against
10:21:46 13 Salesforce, in which case this action would be moot and there
10:21:49 14 would be no need for any further proceedings.

10:21:51 15 THE COURT: All right. My intent is to grant
10:21:53 16 the stay further and require you to make status hearings every
10:21:56 17 six months. But, I ought to ask do you have anything further?

10:21:56 18 (No response.)

10:22:00 19 THE COURT: Thank you, sir.

10:22:04 20 MR. SEREBOFF: Uh, Your Honor, if we may, could
10:22:08 21 we file a motion to lift the stay to lay the issues more
10:22:11 22 firmly in front of the Court?

10:22:13 23 THE COURT: Sure. But, I'm ruling now I'm going
10:22:15 24 to continue the stay --

10:22:16 25 MR. SEREBOFF: I understand.

10:22:17 1 THE COURT: And order six-month status reports
10:22:20 2 and hearings. But, I see no reason not to grant the stay. It
10:22:24 3 clearly would moot this case. And since the proceedings are
10:22:29 4 up in the air, it makes sense to let that court, PTAB, make
10:22:34 5 a final ruling.

10:22:36 6 So, I'm going to continue the stay. You're welcome
10:22:38 7 to file motions as anytime, of course.

10:22:40 8 MR. SEREBOFF: Thank you, Your Honor.

10:22:41 9 THE COURT: Okay.

10:22:41 10 Thank you so much.

10:22:44 11 Will you prepare an order to that effect, please?

10:22:47 12 MR. STAKE: Yes, Your Honor.

10:22:47 13 THE COURT: And submit it to the Court.

10:22:49 14 MR. STAKE: Will do.

10:22:50 15 THE COURT: Thank you so much.

10:22:52 16 MR. SEREBOFF: Thank you, Your Honor.

10:22:53 17 MR. GRAVES: Thank you, Your Honor.

10:22:54 18
19 (Court Adjourned.)

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I certify that the foregoing is a correct
transcript from the record of proceedings
in the above-entitled matter.

\s\ Kathryn M. French

September 26, 2018

KATHRYN M. FRENCH, RPR, CCR
Official Reporter

DATE

10:22:56
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